

2013 DRAFTING REQUEST

Bill

Received:	7/31/2013	Received By:	gmalaise
Wanted:	As time permits	Same as LRB:	
For:	Joel Kleefisch (608) 266-8551	By/Representing:	Ashley Moore
May Contact:		Drafter:	gmalaise
Subject:	Employ Priv - minimum wage	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
 Requester's email: **Rep.Kleefisch@legis.wisconsin.gov**
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Compensatory time in lieu of overtime pay for private sector employees

Instructions:

See attached--permit private sector employers to provide compensatory time, in lieu of overtime pay, for their employees

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 8/2/2013	scalvin 8/16/2013	jfrantze 8/16/2013	_____			
/P1	gmalaise 11/14/2013			_____	sbasford 8/16/2013		State
/1		scalvin 11/22/2013	jfrantze 11/25/2013	_____	mbarman 11/25/2013	lparisi 12/4/2013	State

FE Sent For:

at intro
1/10/14

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/P1		/1 sac 11/21/2013	/1 sac 11/22/2013	_____	sbasford 8/16/2013		State

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
Topic:

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Instructions:

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/?	gmalaise	/Pl sac 08/16/2013		 8/16			

FE Sent For:

<END>

Malaise, Gordon

From: Moore, Ashlee
Sent: Tuesday, July 30, 2013 3:18 PM
To: Malaise, Gordon
Subject: FW:

Ashlee Moore

Representative Joel Kleefisch – 38th Assembly District
307 North, State Capitol – (608) 266-8551

From: Nuss, Mitchell
Sent: Tuesday, July 30, 2013 1:04 PM
To: Moore, Ashlee
Subject:

<http://www.govtrack.us/congress/bills/113/hr1406/text>



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CONGRESS [BILLS](#) [H.R. 1406](#) [BILL TEXT](#)

H.R. 1406: Working Families Flexibility Act of 2013

113th Congress, 2013–2015. Text as of May 09, 2013 (Referred to Senate Committee).

[Status & Summary](#) | [PDF](#) | Source: [GPO](#)

HR 1406 RFS

113th CONGRESS

1st Session

H. R. 1406

IN THE SENATE OF THE UNITED STATES

May 9, 2013

Received; read twice and referred to the Committee on Health, Education, Labor, and Pensions

AN ACT

To amend the Fair Labor Standards Act of 1938 to provide compensatory time for employees in the private sector.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SECTION 1. SHORT TITLE.

This Act may be cited as the 'Working Families Flexibility Act of 2013'.

SEC. 2. COMPENSATORY TIME.

Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) is amended by adding at the end the following:

'(s) Compensatory Time Off for Private Employees-

'(1) GENERAL RULE- An employee may receive, in accordance with this subsection and in lieu of monetary overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

'(2) CONDITIONS- An employer may provide compensatory time to employees under paragraph (1)(A) only if such time is provided in accordance with--

'(A) applicable provisions of a collective bargaining agreement between the employer and the labor organization that has been certified or recognized as the representative of the employees under applicable law; or

'(B) in the case of employees who are not represented by a labor organization that has been certified or recognized as the representative of such employees under applicable law, an agreement arrived at between the employer and employee before the performance of the work and affirmed by a written or otherwise verifiable record maintained in accordance with section 11(c)--

'(i) in which the employer has offered and the employee has chosen to receive compensatory time in lieu of monetary overtime compensation; and

'(ii) entered into knowingly and voluntarily by such employees and not as a condition of employment.

No employee may receive or agree to receive compensatory time off under this subsection unless the employee has worked at least 1,000 hours for the employee's employer during a period of continuous employment with the employer in the 12-month period before the date of agreement or receipt of compensatory time off.

'(3) HOUR LIMIT-

'(A) MAXIMUM HOURS- An employee may accrue not more than 160 hours of compensatory time.

'(B) COMPENSATION DATE- Not later than January 31 of each calendar year, the employee's employer shall provide monetary compensation for any unused compensatory time off accrued during the preceding calendar year that was not used prior to December 31 of the preceding year at the rate prescribed by paragraph (6). An employer may designate and communicate to the employer's employees a 12-month period other than the calendar year, in which

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case such compensation shall be provided not later than 31 days after the end of such 12-month period.

‘(C) EXCESS OF 80 HOURS- The employer may provide monetary compensation for an employee’s unused compensatory time in excess of 80 hours at any time after giving the employee at least 30 days notice. Such compensation shall be provided at the rate prescribed by paragraph (6).

‘(D) POLICY- Except where a collective bargaining agreement provides otherwise, an employer that has adopted a policy offering compensatory time to employees may discontinue such policy upon giving employees 30 days notice.

‘(E) WRITTEN REQUEST- An employee may withdraw an agreement described in paragraph (2)(B) at any time. An employee may also request in writing that monetary compensation be provided, at any time, for all compensatory time accrued that has not yet been used. Within 30 days of receiving the written request, the employer shall provide the employee the monetary compensation due in accordance with paragraph (6).

‘(4) PRIVATE EMPLOYER ACTIONS- An employer that provides compensatory time under paragraph (1) to employees shall not directly or indirectly intimidate, threaten, or coerce or attempt to intimidate, threaten, or coerce any employee for the purpose of--

‘(A) interfering with such employee’s rights under this subsection to request or not request compensatory time off in lieu of payment of monetary overtime compensation for overtime hours; or

‘(B) requiring any employee to use such compensatory time.

‘(5) TERMINATION OF EMPLOYMENT- An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon the voluntary or involuntary termination of employment, be paid for the unused compensatory time in accordance with paragraph (6).

‘(6) RATE OF COMPENSATION-

‘(A) GENERAL RULE- If compensation is to be paid to an employee for accrued compensatory time off, such compensation shall be paid at a rate of compensation not less than--

‘(i) the regular rate received by such employee when the compensatory time was earned; or

‘(ii) the final regular rate received by such employee,

whichever is higher.

‘(B) CONSIDERATION OF PAYMENT- Any payment owed to an employee under this subsection for unused compensatory time shall be considered unpaid overtime compensation.

‘(7) USE OF TIME- An employee--

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'(A) who has accrued compensatory time off authorized to be provided under paragraph (1); and

'(B) who has requested the use of such compensatory time, shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the employer.

'(8) DEFINITIONS- For purposes of this subsection--

'(A) the term 'employee' does not include an employee of a public agency; and

'(B) the terms 'overtime compensation' and 'compensatory time' shall have the meanings given such terms by subsection (o)(7).'

SEC. 3. REMEDIES.

Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended--

(1) in subsection (b), by striking '(b) Any employer' and inserting '(b) Except as provided in subsection (f), any employer'; and

(2) by adding at the end the following:

'(f) An employer that violates section 7(s)(4) shall be liable to the employee affected in the amount of the rate of compensation (determined in accordance with section 7(s)(6)(A)) for each hour of compensatory time accrued by the employee and in an additional equal amount as liquidated damages reduced by the amount of such rate of compensation for each hour of compensatory time used by such employee.'

SEC. 4. NOTICE TO EMPLOYEES.

Not later than 30 days after the date of enactment of this Act, the Secretary of Labor shall revise the materials the Secretary provides, under regulations published in section 516.4 of title 29, Code of Federal Regulations, to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 to employees so that such notice reflects the amendments made to such Act by this Act.

SEC. 5. GAO REPORT.

Beginning 2 years after the date of enactment of this Act and each of the 3 years thereafter, the Comptroller General shall submit a report to Congress providing, with respect to the reporting period immediately prior to each such report--

(1) data concerning the extent to which employers provide compensatory time pursuant to section 7(s) of the Fair Labor Standards Act of 1938, as added by this Act, and the extent to which employees opt to receive compensatory time;

(2) the number of complaints alleging a violation of such section filed by any employee with the Secretary of Labor;

(3) the number of enforcement actions commenced by the Secretary or commenced by the Secretary on behalf of any employee for alleged violations of such section;

(4) the disposition or status of such complaints and actions described in paragraphs (2) and (3); and

(5) an account of any unpaid wages, damages, penalties, injunctive relief, or other remedies obtained or sought by the Secretary in connection with such actions described in paragraph (3).

SEC. 6. SUNSET.

This Act and the amendments made by this Act shall expire 5 years after the date of enactment of this Act.

Passed the House of Representatives May 8, 2013.

Attest:

KAREN L. HAAS,

Clerk.

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State of Wisconsin
2013 - 2014 LEGISLATURE

SN 812



LRB-28147

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

- 1 *general* **AN ACT** ...; **relating to:** the provision of compensatory time off in lieu of overtime
- 2 compensation by private employers.

Analysis by the Legislative Reference Bureau

Current law, subject to certain exceptions, requires an employer to pay an employee 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per week (overtime compensation). Current law, however, permits the state or a local governmental unit to provide an employee, in lieu of overtime compensation, paid time off at a rate of not less than 1.5 hours for each hour of employment for which overtime compensation is otherwise required (compensatory time off), if such an arrangement is authorized by a collective bargaining agreement or other agreement arrived at before the work is performed.

This bill permits an employer other than the state or a local governmental unit (private employer) to provide compensatory time off in lieu of overtime compensation, if such an arrangement is authorized by a collective bargaining agreement or other agreement arrived at before the work is performed, is entered into by the employee knowingly and voluntarily and not as a condition of employment, and is affirmed by a written or otherwise verifiable record maintained by the employer. The bill permits an employee to accrue not more than 160 hours of compensatory time and provides that if an employee who has accrued 160 hours of compensatory time works additional hours during periods for which overtime compensation is payable, the employer must provide the employee overtime compensation for those additional hours worked. The bill requires an employer to permit an employee who requests the use of compensatory time that the employee

has accrued to use that compensatory time within a reasonable period after the employee makes the request if the use of that compensatory time does not unduly disrupt the employer's operations.

In addition, the bill requires or permits an employer to pay monetary compensation instead of provide compensatory time off as follows:

1. By January 31 of each year or by the 31st day after any other 12-month period designated by the employer, the employer must provide monetary compensation to an employee for any compensatory time accrued by the employee and not used during the preceding year or other 12-month period.

2. An employer may at any time provide monetary compensation to an employee for any unused compensatory time accrued by the employee in excess of 80 hours.

3. An employee may at any time request in writing that the employer provide the employee with monetary compensation for any unused compensatory time accrued by the employee.

4. On termination of employment, the employer must provide monetary compensation to the employee for any unused compensatory time accrued by the employee.

Finally, the bill permits an employer that has adopted a policy of offering compensatory time to discontinue that policy upon giving its employees 30 days' notice of the employer's intent to discontinue that policy, except as otherwise provided in a collective bargaining agreement. The bill also permits an employee who has entered into an agreement to take compensatory time off in lieu of overtime compensation to withdraw from that agreement at any time.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.923 (16) of the statutes, as affected by 2011 Wisconsin Act 32,
2 is amended to read:

NOTE: NOTE: Sub. (16) is amended eff. 7-1-13 by 2011 Wis. Act 32 to read: NOTE:

3 **20.923 (16) OVERTIME AND COMPENSATORY TIME EXCLUSION.** The salary paid to any person
4 whose position is included under subs. (2), (4), (7), and (8) to (12) is deemed to compensate
5 that person for all work hours. No overtime compensation may be paid, and no
6 compensatory time under s. 103.025 (2) may be provided, to any such person for hours
7 worked in any workweek in excess of the standard basis of employment as specified in s.
8 230.35 (5) (a).

History: 1971 c. 18, 125, 164; 1971 c. 270 ss. 98, 104; 1971 c. 307, 321; 1973 c. 90, 156, 243, 333; 1975 c. 28; 1975 c. 39 ss. 236c to 247, 735 (5); 1975 Ex. Order No. 24; 1975 c. 189, 199, 224, 422; 1977 c. 29 ss. 399g to 406d, 1649, 1650m, 1654 (8) (e), 1656 (43); 1977 c. 44; 1977 c. 187 ss. 29, 30, 31, 135; 1977 c. 196 ss. 74 to 76m, 131; 1977 c. 203, 272, 277, 418, 447, 449; Sup. Ct. Order, 88 Wis. 2d xiii (1979); 1979 c. 32 s. 92 (1); 1979 c. 34, 89, 189; 1979 c. 221 ss. 201m to 218, 2202 (13); 1979 c. 361; 1981 c. 20 ss. 587 to 592g, 2202 (33) (b), (c), (56) (a); 1981 c. 96 ss. 16, 67; 1981 c. 121, 127, 347, 353; 1981 c. 390 s. 252; 1983 a. 27, 46, 121, 192, 371, 378; 1985 a. 18, 23; 1985 a. 29 ss. 603 to 607, 3202 (22) (a); 1985 a. 34, 332; 1987 a. 6, 27, 82, 119, 306, 340, 354, 399, 403; 1989 a. 31, 56, 107, 208, 219, 336; 1991 a. 39, 269; 1993 a. 12, 16, 75, 123, 144, 184, 294, 349, 399, 490; 1995 a. 27 ss. 1193 to 1217m, 9130 (4), 9216 (19); 1995 a. 37, 216, 225; 1997 a. 2, 3, 27, 29, 41, 194, 237; 1999 a. 9, 42, 102, 186; 2001 a. 16, 19, 29, 109; 2003 a. 33 ss. 721 to 735m, 9160; 2003 a. 91, 320; 2005 a. 25; 2007 a. 1; 2007 a. 20 ss. 616 to 630, 9121 (6) (a); 2007 a. 196; 2009 a. 28, 180; 2011 a. 10, 32, 38; s. 13.92 (2) (i).

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SECTION 2. 62.13 (7n) of the statutes is amended to read:

62.13 (7n) HOURS OF LABOR. Except when a labor agreement under subch. IV of ch. 111 that governs hours of employment exists, the council of every 2nd, 3rd, or 4th class city shall provide for a working day of not more than 8 hours in each 24 except in cases of positive necessity by some sudden and serious emergency, which, in the judgment of the chief of police, the fire chief, or the chief of the combined protective services department, demands that such workday shall be extended beyond the 8-hour period at such time; and, when such emergency ceases to exist, all overtime given during such emergency shall be placed to the credit of such subordinate police officer, or each subordinate designated as primarily a police officer under sub. (2e) (b), and compensatory time under s. 103.025 (2) given therefor.

History: 1971 c. 41 s. 12; 1971 c. 213 s. 5; 1975 c. 94 ss. 26, 91 (5); 1975 c. 199; 1977 c. 20; 1977 c. 29 s. 1654 (8) (c); 1977 c. 151, 182, 196; 1981 c. 171, 380; 1981 c. 390 s. 252; 1981 c. 391 s. 211; 1985 a. 135 s. 83 (3), (5); 1985 a. 166; 1987 a. 27; 1989 a. 31, 192; 1991 a. 32, 101, 189; 1993 a. 16, 53, 144, 213; 1995 a. 225, 270; 1999 a. 182; 2003 a. 205; 2005 a. 40; 2009 a. 173; 2011 a. 32, 75.

SECTION 3. 62.57 of the statutes is amended to read:

62.57 Uniform salaries in 1st class cities. The common council of a 1st class city may at any regular or special meeting adopt a uniform and comprehensive salary or wage ordinance, or both, based on a classification of officers, employments and positions in the city service, whether previously so classified or not, if provision has been made in the budget of the current year for the total sum of money required for the payment of the salaries and wages and a tax levied to fund the wages and salaries. Wages under this section may be fixed by resolution. The common council may, at any time, determine a cost-of-living increment or deduction, to be paid in addition to wages or salaries under this section, based on a proper finding of the United States bureau of labor statistics. The common council may provide for

overtime pay and compensatory time under s. 103.025 (2) for employees who work in excess of 40 hours per week.

History: 1993 a. 144; 1999 a. 150 s. 498; Stats. 1999 s. 62.57.

SECTION 4. 97.42 (4) (f) of the statutes is amended to read:

97.42 (4) (f) Overtime agreements with the department whereby the operator of any establishment subject to a license under sub. (2), agrees to pay the cost for salaries, at overtime rates, and other expenses of department inspectors whenever slaughtering, carcass preparation, or the processing of meat or poultry products or meat food products is conducted beyond hours or days limited under par. (e), or on Saturdays, Sundays, or holidays for state employees under s. 230.35 (4), or before 6 a.m. or after 6 p.m., or in excess of 40 hours in any week. Overtime charges for periodic inspections under sub. (3) (e) shall, insofar as possible, be limited to the minimum number of hours reasonably required for the conduct of such inspections. The department may assess overtime charges under this paragraph even though the department provides compensatory time in lieu of overtime compensation under s. 103.025 (2).

History: 1971 c. 270 s. 104; 1973 c. 206; 1975 c. 408, 421; 1977 c. 196 s. 131; 1977 c. 216, 365; 1979 c. 110, 154; 1981 c. 314; 1983 a. 189, 261; 1983 a. 500 s. 44; 1985 a. 29; 1987 a. 399; 1989 a. 174; 1991 a. 39, 175, 269; 1993 a. 16, 27, 144, 492; 1995 a. 79, 225; 1999 a. 9, 185; 2001 a. 56.

SECTION 5. 103.025 (1) (title) of the statutes is created to read:

103.025 (1) (title) DEFINITIONS.

SECTION 6. 103.025 (2) of the statutes is amended to read:

103.025 (2) PUBLIC EMPLOYERS. An employer described in s. 103.01 (1) (b) 104.01 (3) (b) may provide an employee, in lieu of overtime compensation, compensatory time off as permitted under 29 USC 207 (o), as amended to April 15, 1986.

History: 1993 a. 144.

SECTION 7. 103.025 (3) of the statutes is created to read:

1 103.025 (3) PRIVATE EMPLOYERS. (a) *Definition*. In this subsection, “employer”
2 has the meaning given in s. 104.01 (3) (a),[✓] but does not include an employer described
3 in s. 104.01 (3) (b).[✓]

4 (b) *Compensatory time off permitted*. Subject to pars. (c) and (d), an employer
5 may provide an employee, in lieu of overtime compensation, compensatory time off
6 at a rate of not less than 1.5 hours for each hour of employment for which overtime
7 compensation is required to be paid.

8 (c) *Agreement required*. An employer may provide compensatory time off to an
9 employee under par. (a)[✓] only if that time off is provided in accordance with any of the
10 following:

11 1. The applicable provisions of a collective bargaining agreement between the
12 employer and a labor organization that has been certified or recognized as the
13 representative of the employee.

14 2. In the case of an employee who is not represented by a labor organization
15 described in subd. 1.,[✓] an agreement between the employer and the employee arrived
16 at before the performance of the work, entered into by the employee knowingly and
17 voluntarily and not as a condition of employment, and affirmed by a written or
18 otherwise verifiable record maintained by the employer in accordance with s. 104.09.[✓]

19 (d) *Hour limit*. An employee may accrue not more than 160 hours of
20 compensatory time under par. (a)^{e-b}. If an employee who has accrued 160 hours of
21 compensatory time works additional hours during periods for which overtime
22 compensation is payable, the employer shall provide the employee overtime
23 compensation for those additional hours worked.

24 (e) *Use of compensatory time*. An employer shall permit an employee who
25 requests the use of compensatory time that the employee has accrued to use that

1 compensatory time within a reasonable period after the employee makes the request
2 if the use of that compensatory time does not unduly disrupt the employer's
3 operations.

4 ^{g f} (b) ^Λ *Monetary compensation* 1. By January 31 of each year or by the 31st day
5 after the end of any other 12-month period designated by an employer, the employer
6 shall provide monetary compensation to an employee for any compensatory time
7 accrued by the employee and not used during the preceding year or other 12-month
8 period at the rate prescribed in subd. 5. ✓

9 2. Notwithstanding subd. 1., ✓ an employer may at any time provide monetary
10 compensation to an employee for any unused compensatory time accrued by the
11 employee in excess of 80 hours after first giving the employee 30 ^{g Δ} days' notice of the
12 employer's intent to provide that compensation. The employer shall provide that
13 compensation at the rate prescribed in subd. 5. ✓

14 3. An employee may at any time request in writing that his or her employer
15 provide the employee with monetary compensation for any unused compensatory
16 time accrued by the employee. Within 30 days after receiving such a request, the
17 employer shall provide the employee with that monetary compensation at the rate
18 prescribed in subd. 5. ✓ *g*

19 4. On termination of an employee's employment with an employer, the
20 employer shall provide monetary compensation to the employee for any unused
21 compensatory time accrued by the employee at the rate prescribed in subd. 5. ✓

22 5. An employer shall pay any monetary compensation provided under subd. *g*
23 1., 2., 3., or 4. at the regular rate of pay of the employee at the time the compensatory
24 time was earned or at the final regular rate of pay of the employee, whichever is
25 greater. In this subdivision, "final regular rate of pay" means the regular rate of pay

of an employee at the end of the preceding year or other 12-month period specified in subd. 1., at the time of a notice under subd. 2., at the time of a request under subd. 3., or at the time of termination of the employee's employment under subd. 4.

6. Any payment owed to an employee under subds. 1., 2., 3., or 4. shall be considered unpaid overtime compensation.

^g *Discontinuance or withdrawal.* 1. Except when a collective bargaining agreement provides otherwise, an employer that has adopted a policy of offering compensatory time to employees may discontinue that policy upon giving its employees 30 days' notice of the employer's intent to discontinue that policy.

2. An employee who has entered into an agreement under par. (c) 2. may withdraw from that agreement at any time.

^g *Actions prohibited.* No employer may do any of the following:

1. Interfere with, restrain, or deny an employee's right under this subsection to agree or not to agree to the provision of compensatory time in lieu of overtime compensation, to request or not to request compensatory time off in lieu of being paid overtime compensation, or to use or not to compensatory time off in lieu of being paid overtime compensation.

2. Discharge or otherwise discriminate against an employee for exercising a right specified in subd. 1., opposing a practice prohibited under subd. 1., filing a complaint or attempting to enforce any right under subd. 1., or testifying or assisting in any action or proceeding to enforce any right under subd. 1.

^h *Enforcement.* 1. An employee who is discharged or otherwise discriminated against in violation of par. (g) 2. may file a complaint with the department, and the department shall process the complaint in the same manner as employment discrimination complaints are processed under s. 111.39. If the department finds

that a violation of par. (g) 2. has been committed, the department may order the employer to take such action authorized under s. 111.39 as will remedy the violation. Section 111.322 (2m) applies to a discharge or other discriminatory act arising in connection with any proceeding under this subdivision.

2. An employee who is owed monetary compensation under par. (g) 1., 2., 3., or 4. may file a wage claim with the department under s. 109.09 (1) or may bring an action under s. 109.03 (5) without first filing a wage claim with the department.

SECTION 8. 106.54 (10) of the statutes is created to read:

106.54 (10) The division shall receive complaints under s. 103.025 (3) 1. and shall process the complaints in the same manner as employment discrimination complaints are processed under s. 111.39.

SECTION 9. 109.09 (1) of the statutes is amended to read:

109.09 (1) The department shall investigate and attempt equitably to adjust controversies between employers and employees as to alleged wage claims. The department may receive and investigate any wage claim which is filed with the department, or received by the department under s. 109.10 (4), no later than 2 years after the date the wages are due. The department may, after receiving a wage claim, investigate any wages due from the employer against whom the claim is filed to any employee during the period commencing 2 years before the date the claim is filed. The department shall enforce this chapter and ss. 66.0903, 103.02, 103.025, 103.49, 103.82, 104.12, and 229.8275. In pursuance of this duty, the department may sue the employer on behalf of the employee to collect any wage claim or wage deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions under s. 109.10, the department may refer such an action to the district attorney of the county in which the violation occurs for prosecution and collection and the

1 district attorney shall commence an action in the circuit court having appropriate
2 jurisdiction. Any number of wage claims or wage deficiencies against the same
3 employer may be joined in a single proceeding, but the court may order separate
4 trials or hearings. In actions that are referred to a district attorney under this
5 subsection, any taxable costs recovered by the district attorney shall be paid into the
6 general fund of the county in which the violation occurs and used by that county to
7 meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office
8 of the district attorney who prosecuted the action.

History: 1975 c. 380; 1979 c. 32 s. 92 (9); 1985 a. 29, 220; 1989 a. 113; 1991 a. 146; 1993 a. 86, 453; 1995 a. 227; 1997 a. 27, 237; 1999 a. 9; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 10; 2003 a. 63; 2005 a. 434; 2009 a. 28; 2011 a. 32.

9 **SECTION 10.** 111.322 (2m) (a) of the statutes is amended to read:

10 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
11 right under s. 103.02, 103.025, 103.10, 103.13, 103.28, 103.32, 103.34, 103.455,
12 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to 101.599
13 or 103.64 to 103.82.

History: 1981 c. 334; 1989 a. 228, 359; 1997 a. 237; 1999 a. 150 s. 672; 1999 a. 167, 176; 2009 a. 3, 28, 76, 182, 290; 2011 a. 32.

14 **SECTION 11.** 111.322 (2m) (b) of the statutes is amended to read:

15 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
16 held under or to enforce any right under s. 103.02, 103.025, 103.10, 103.13, 103.28,
17 103.32, 103.34, 103.455, 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, or 146.997
18 or ss. 101.58 to 101.599 or 103.64 to 103.82.

History: 1981 c. 334; 1989 a. 228, 359; 1997 a. 237; 1999 a. 150 s. 672; 1999 a. 167, 176; 2009 a. 3, 28, 76, 182, 290; 2011 a. 32.

19 **SECTION 12. Initial applicability.**

20 (1) COLLECTIVE BARGAINING AGREEMENTS. This act first applies to hours worked
21 on the effective date of this subsection, except that in the case of an employee who
22 on that date is covered by a collective bargaining agreement containing provisions
23 that are inconsistent with this act, this act first applies to hours worked on the day

1 on which the collective bargaining agreement expires, or is extended, modified, or
2 renewed, which occurs first.

3 (END)



State of Wisconsin
2013 - 2014 LEGISLATURE

EN 11/14
Soon



LRB-2814/RV

GMM:sac:ff

1
RWR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

4B

gen act

1 AN ACT *to amend* 20.923 (16), 62.13 (7n), 62.57, 97.42 (4) (f), 103.025 (2), 109.09
2 (1), 111.322 (2m) (a) and 111.322 (2m) (b); and *to create* 103.025 (1) (title),
3 103.025 (3) and 106.54 (10) of the statutes; **relating to:** the provision of
4 compensatory time off in lieu of overtime compensation by private employers.

Analysis by the Legislative Reference Bureau

Current law, subject to certain exceptions, requires an employer to pay an employee 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per week (overtime compensation). Current law, however, permits the state or a local governmental unit to provide an employee, in lieu of overtime compensation, paid time off at a rate of not less than 1.5 hours for each hour of employment for which overtime compensation is otherwise required (compensatory time off), if such an arrangement is authorized by a collective bargaining agreement or other agreement arrived at before the work is performed.

✓ This bill permits an employer other than the state or a local governmental unit (private employer) to provide compensatory time off in lieu of overtime compensation, if such an arrangement is authorized by a collective bargaining agreement or other agreement arrived at before the work is performed, is entered into by the employee knowingly and voluntarily and not as a condition of employment, and is affirmed by a written ~~or otherwise verifiable~~ record maintained by the employer. The bill permits an employee to accrue not more than 160 hours of compensatory time and provides that if an employee who has accrued 160 hours of compensatory time works additional hours during periods for which overtime

compensation is payable, the employer must provide the employee overtime compensation for those additional hours worked. The bill requires an employer to permit an employee who requests the use of compensatory time that the employee has accrued to use that compensatory time within a reasonable period after the employee makes the request if the use of that compensatory time does not unduly disrupt the employer's operations.

In addition, the bill requires or permits an employer to pay monetary compensation instead of provide compensatory time off as follows:

1. By January 31 of each year or by the 31st day after any other 12-month period designated by the employer, the employer must provide monetary compensation to an employee for any compensatory time accrued by the employee and not used during the preceding year or other 12-month period.

2. An employer may at any time provide monetary compensation to an employee for any unused compensatory time accrued by the employee in excess of 80 hours.

3. An employee may at any time request in writing that the employer provide the employee with monetary compensation for any unused compensatory time accrued by the employee.

4. On termination of employment, the employer must provide monetary compensation to the employee for any unused compensatory time accrued by the employee.

Finally, the bill permits an employer that has adopted a policy of offering compensatory time to discontinue that policy upon giving its employees 30 days' notice of the employer's intent to discontinue that policy, except as otherwise provided in a collective bargaining agreement. The bill also permits an employee who has entered into an agreement to take compensatory time off in lieu of overtime compensation to withdraw from that agreement at any time.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 20.923 (16) of the statutes, as affected by 2011 Wisconsin Act 32,
2 is amended to read:

3 20.923 (16) OVERTIME AND COMPENSATORY TIME EXCLUSION. The salary paid to
4 any person whose position is included under subs. (2), (4), (7), and (8) to (12) is
5 deemed to compensate that person for all work hours. No overtime compensation
6 may be paid, and no compensatory time under s. 103.025 (2) may be provided, to any

1 such person for hours worked in any workweek in excess of the standard basis of
2 employment as specified in s. 230.35 (5) (a).

3 **SECTION 2.** 62.13 (7n) of the statutes is amended to read:

4 62.13 (7n) HOURS OF LABOR. Except when a labor agreement under subch. IV
5 of ch. 111 that governs hours of employment exists, the council of every 2nd, 3rd, or
6 4th class city shall provide for a working day of not more than 8 hours in each 24
7 except in cases of positive necessity by some sudden and serious emergency, which,
8 in the judgment of the chief of police, the fire chief, or the chief of the combined
9 protective services department, demands that such workday shall be extended
10 beyond the 8-hour period at such time; and, when such emergency ceases to exist,
11 all overtime given during such emergency shall be placed to the credit of such
12 subordinate police officer, or each subordinate designated as primarily a police
13 officer under sub. (2e) (b), and compensatory time under s. 103.025 (2) given therefor.

14 **SECTION 3.** 62.57 of the statutes is amended to read:

15 **62.57 Uniform salaries in 1st class cities.** The common council of a 1st class
16 city may at any regular or special meeting adopt a uniform and comprehensive salary
17 or wage ordinance, or both, based on a classification of officers, employments and
18 positions in the city service, whether previously so classified or not, if provision has
19 been made in the budget of the current year for the total sum of money required for
20 the payment of the salaries and wages and a tax levied to fund the wages and
21 salaries. Wages under this section may be fixed by resolution. The common council
22 may, at any time, determine a cost-of-living increment or deduction, to be paid in
23 addition to wages or salaries under this section, based on a proper finding of the
24 United States bureau of labor statistics. The common council may provide for

1 overtime pay and compensatory time under s. 103.025 (2) for employees who work
2 in excess of 40 hours per week.

3 **SECTION 4.** 97.42 (4) (f) of the statutes is amended to read:

4 97.42 (4) (f) Overtime agreements with the department whereby the operator
5 of any establishment subject to a license under sub. (2), agrees to pay the cost for
6 salaries, at overtime rates, and other expenses of department inspectors whenever
7 slaughtering, carcass preparation, or the processing of meat or poultry products or
8 meat food products is conducted beyond hours or days limited under par. (e), or on
9 Saturdays, Sundays, or holidays for state employees under s. 230.35 (4), or before 6
10 a.m. or after 6 p.m., or in excess of 40 hours in any week. Overtime charges for
11 periodic inspections under sub. (3) (e) shall, insofar as possible, be limited to the
12 minimum number of hours reasonably required for the conduct of such inspections.
13 The department may assess overtime charges under this paragraph even though the
14 department provides compensatory time in lieu of overtime compensation under s.
15 103.025 (2).

16 **SECTION 5.** 103.025 (1) (title) of the statutes is created to read:

17 103.025 (1) (title) DEFINITIONS.

18 **SECTION 6.** 103.025 (2) of the statutes is amended to read:

19 103.025 (2) PUBLIC EMPLOYERS. An employer described in s. ~~103.01 (1) (b)~~ 104.01
20 (3) (b) may provide an employee, in lieu of overtime compensation, compensatory
21 time off as permitted under 29 USC 207 (o), as amended to April 15, 1986.

22 **SECTION 7.** 103.025 (3) of the statutes is created to read:

23 103.025 (3) PRIVATE EMPLOYERS. (a) *Definition.* In this subsection, “employer”
24 has the meaning given in s. 104.01 (3) (a), but does not include an employer described
25 in s. 104.01 (3) (b).

1 (b) *Compensatory time off permitted.* Subject to pars. (c) and (d), an employer
2 may provide an employee, in lieu of overtime compensation, compensatory time off
3 at a rate of not less than 1.5 hours for each hour of employment for which overtime
4 compensation is required to be paid.

5 (c) *Agreement required.* An employer may provide compensatory time off to an
6 employee under par. (b) only if that time off is provided in accordance with any of the
7 following:

8 1. The applicable provisions of a collective bargaining agreement between the
9 employer and a labor organization that has been certified or recognized as the
10 representative of the employee.

11 2. In the case of an employee who is not represented by a labor organization
12 described in subd. 1., an agreement between the employer and the employee arrived
13 at before the performance of the work, entered into by the employee knowingly and
14 voluntarily and not as a condition of employment, and affirmed by a written
15 otherwise verifiable record maintained by the employer in accordance with s. 104.09.

16 (d) *Hour limit.* An employee may accrue not more than 160 hours of
17 compensatory time under par. (b). If an employee who has accrued 160 hours of
18 compensatory time works additional hours during periods for which overtime
19 compensation is payable, the employer shall provide the employee overtime
20 compensation for those additional hours worked.

21 (e) *Use of compensatory time.* An employer shall permit an employee who
22 requests the use of compensatory time that the employee has accrued to use that
23 compensatory time within a reasonable period after the employee makes the request
24 if the use of that compensatory time does not unduly disrupt the employer's
25 operations.

1 (f) *Monetary compensation.* 1. By January 31 of each year or by the 31st day
2 after the end of any other 12-month period designated by an employer, the employer
3 shall provide monetary compensation to an employee for any compensatory time
4 accrued by the employee and not used during the preceding year or other 12-month
5 period at the rate prescribed in subd. 5.

6 2. Notwithstanding subd. 1., an employer may at any time provide monetary
7 compensation to an employee for any unused compensatory time accrued by the
8 employee in excess of 80 hours after first giving the employee 30 days' notice of the
9 employer's intent to provide that compensation. The employer shall provide that
10 compensation at the rate prescribed in subd. 5.

11 3. An employee may at any time request in writing that his or her employer
12 provide the employee with monetary compensation for any unused compensatory
13 time accrued by the employee. Within 30 days after receiving such a request, the
14 employer shall provide the employee with that monetary compensation at the rate
15 prescribed in subd. 5.

16 4. On termination of an employee's employment with an employer, the
17 employer shall provide monetary compensation to the employee for any unused
18 compensatory time accrued by the employee at the rate prescribed in subd. 5.

19 5. An employer shall pay any monetary compensation provided under subd. 1.,
20 2., 3., or 4. at the regular rate of pay of the employee at the time the compensatory
21 time was earned or at the final regular rate of pay of the employee, whichever is
22 greater. In this subdivision, "final regular rate of pay" means the regular rate of pay
23 of an employee at the end of the preceding year or other 12-month period specified
24 in subd. 1., at the time of a notice under subd. 2., at the time of a request under subd.
25 3., or at the time of termination of the employee's employment under subd. 4.

1 6. Any payment owed to an employee under subd. 1., 2., 3., or 4. shall be
2 considered unpaid overtime compensation.

3 (g) *Discontinuance or withdrawal.* 1. Except when a collective bargaining
4 agreement provides otherwise, an employer that has adopted a policy of offering
5 compensatory time to employees may discontinue that policy upon giving its
6 employees 30 days' notice of the employer's intent to discontinue that policy.

7 2. An employee who has entered into an agreement under par. (c) 2. may
8 withdraw from that agreement at any time.

9 (h) *Actions prohibited.* No employer may do any of the following:

10 1. Interfere with, restrain, or deny an employee's right under this subsection
11 to agree or not to agree to the provision of compensatory time in lieu of overtime
12 compensation, to request or not to request compensatory time off in lieu of being paid
13 overtime compensation, or to ^{use} use or not to ~~use~~ compensatory time off in lieu of being paid
14 overtime compensation.

15 2. Discharge or otherwise discriminate against an employee for exercising a
16 right specified in subd. 1., opposing a practice prohibited under subd. 1., filing a
17 complaint or attempting to enforce any right under subd. 1., or testifying or assisting
18 in any action or proceeding to enforce any right under subd. 1.

19 (i) *Enforcement.* 1. An employee who is discharged or otherwise discriminated
20 against in violation of par. (h) 2. may file a complaint with the department, and the
21 department shall process the complaint in the same manner as employment
22 discrimination complaints are processed under s. 111.39. If the department finds
23 that a violation of par. (h) 2. has been committed, the department may order the
24 employer to take such action authorized under s. 111.39 as will remedy the violation.

1 Section 111.322 (2m) applies to a discharge or other discriminatory act arising in
2 connection with any proceeding under this subdivision.

3 2. An employee who is owed monetary compensation under par. (f) 1., 2., 3., or
4 4. may file a wage claim with the department under s. 109.09 (1) or may bring an
5 action under s. 109.03 (5) without first filing a wage claim with the department.

6 **SECTION 8.** 106.54[↓] (10) of the statutes is created to read:

7 106.54 (10) The division shall receive complaints under s. 103.025 (3) (i) 1. and
8 shall process the complaints in the same manner as employment discrimination
9 complaints are processed under s. 111.39.

10 **SECTION 9.** 109.09[↓] (1) of the statutes is amended to read:

11 109.09 (1) The department shall investigate and attempt equitably to adjust
12 controversies between employers and employees as to alleged wage claims. The
13 department may receive and investigate any wage claim which is filed with the
14 department, or received by the department under s. 109.10 (4), no later than 2 years
15 after the date the wages are due. The department may, after receiving a wage claim,
16 investigate any wages due from the employer against whom the claim is filed to any
17 employee during the period commencing 2 years before the date the claim is filed.
18 The department shall enforce this chapter and ss. 66.0903, 103.02, 103.025, 103.49,
19 103.82, 104.12, and 229.8275. In pursuance of this duty, the department may sue the
20 employer on behalf of the employee to collect any wage claim or wage deficiency and
21 ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions
22 under s. 109.10, the department may refer such an action to the district attorney of
23 the county in which the violation occurs for prosecution and collection and the
24 district attorney shall commence an action in the circuit court having appropriate
25 jurisdiction. Any number of wage claims or wage deficiencies against the same

1 employer may be joined in a single proceeding, but the court may order separate
2 trials or hearings. In actions that are referred to a district attorney under this
3 subsection, any taxable costs recovered by the district attorney shall be paid into the
4 general fund of the county in which the violation occurs and used by that county to
5 meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office
6 of the district attorney who prosecuted the action.

7 **SECTION 10.** 111.322 (2m) (a) of the statutes is amended to read:

8 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
9 right under s. 103.02, 103.025, 103.10, 103.13, 103.28, 103.32, 103.34, 103.455,
10 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to 101.599
11 or 103.64 to 103.82.

12 **SECTION 11.** 111.322 (2m) (b) of the statutes is amended to read:

13 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
14 held under or to enforce any right under s. 103.02, 103.025, 103.10, 103.13, 103.28,
15 103.32, 103.34, 103.455, 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, or 146.997
16 or ss. 101.58 to 101.599 or 103.64 to 103.82.

17 **SECTION 12. Initial applicability.**

18 (1) COLLECTIVE BARGAINING AGREEMENTS. This act first applies to hours worked
19 on the effective date of this subsection, except that in the case of an employee who
20 on that date is covered by a collective bargaining agreement containing provisions
21 that are inconsistent with this act, this act first applies to hours worked on the day
22 on which the collective bargaining agreement expires, or is extended, modified, or
23 renewed, which occurs first.

24 (END)

Parisi, Lori

From: Moore, Ashlee
Sent: Wednesday, December 04, 2013 10:44 AM
To: LRB.Legal
Subject: Draft Review: LRB -2814/1 Topic: Compensatory time in lieu of overtime pay for private sector employees

Please Jacket LRB -2814/1 for the ASSEMBLY.